

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT FCU 10-02 PAUL ESLICK
APRIL, 21, 2010**

A report to the Flathead County Board of Adjustment regarding a request by Paul Eslick for a conditional use permit to allow for an extractive industry in the Bigfork zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on May 4, 2010 beginning at 6:00 Pm in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed land use is located within the jurisdiction of the Bigfork Land Use Advisory Committee (BLUAC). On April 29, 2010 at 4:00 pm in the Bethany Lutheran Church at 8559 Montana Hwy. 35 in Bigfork, MT BLUAC will hold a public meeting to review the proposed land use and make a recommendation to the Flathead County Board of Adjustment. This space is reserved for a summary of the Committee's discussion and recommendation.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on May 4, 2010 in the 2nd floor conference room at the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Paul Eslick
300 Swan Highway
Bigfork, MT 59911

ii. Landowner(s)

Joseph Eslick
7645 MT HWY 35
Bigfork, MT 59911

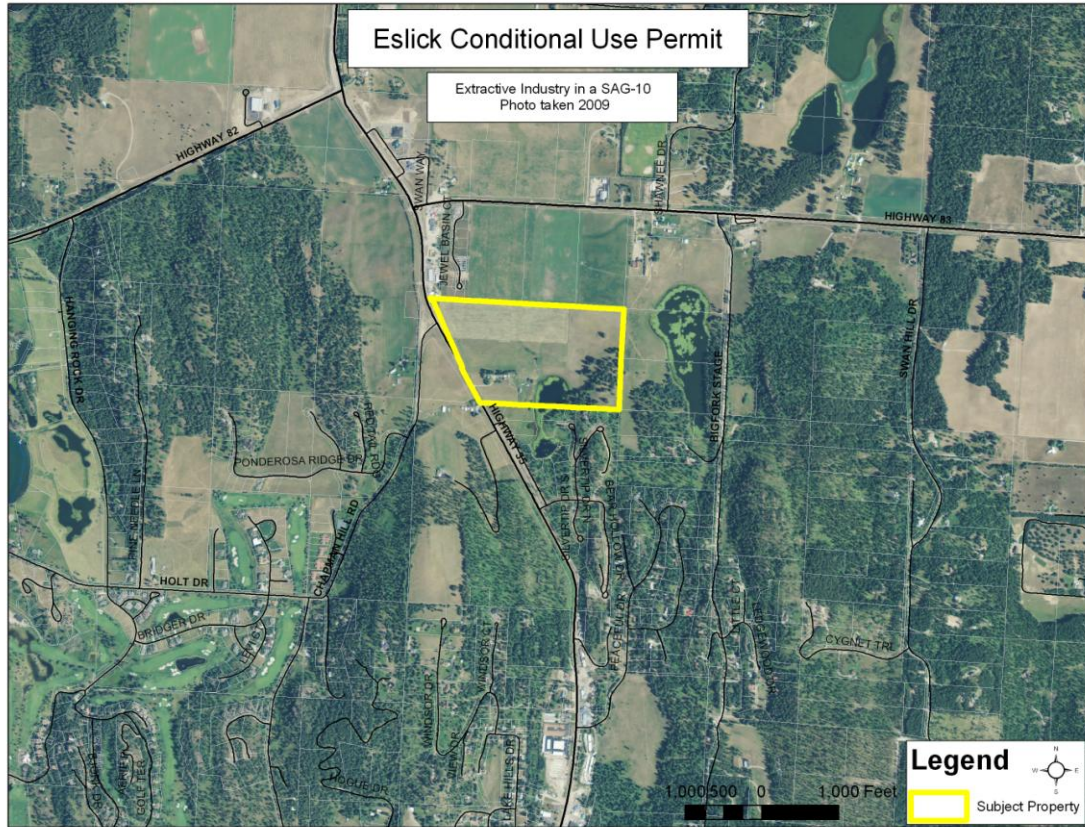
iii. Technical Assistance

None

B. Property Location and Size

The subject property is located in Bigfork, MT south of the intersection of MT HWY 83 and MT HWY 35, just east of the intersection of MT HWY 35 and Chapman Hill RD (figure 1). The property is approximately 65.8 acres and can legally be described as Tract 5 in Section 24, Township 27 North, Range 20 West PMM Flathead Montana.

Figure 1: Subject property (yellow)



C. Existing Land Use(s) and Zoning

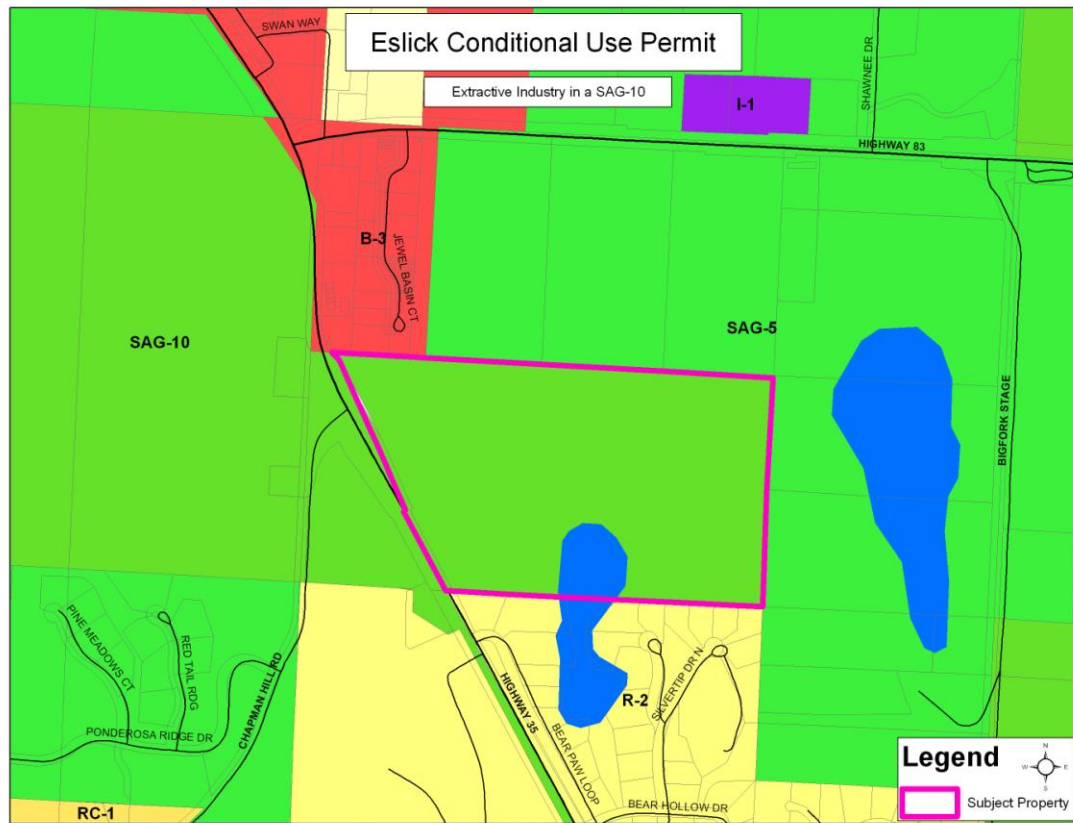
The subject property is zoned SAG-10 Suburban Agricultural, a district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses. The subject property is currently in agricultural production.

D. Adjacent Land Use(s) and Zoning

The subject property is in a transitional area of the Bigfork community. To the south is a residential subdivision, zoned R-2 (the subdivision is predominantly vacant at this time). The land uses adjacent to the subject property to the east are a mix between agricultural and vacant land. The zoning is SAG-5. To the west the land use is agricultural and vacant, and the zoning is SAG-10. To the north the land use is agricultural and commercial. The zoning is B-3 and SAG-5. (See figure 2 for the zoning in the immediate area of the subject property) The applicant's family owns agricultural tracts adjacent to the north and east.

The subject property is designated as Suburban Residential by the Future Land Use Map in the Bigfork Neighborhood Plan. The Suburban Residential designation indicates this area may transition from agricultural uses to residential uses over time.

Figure 2: The zoning in the immediate area.



E. Summary of Request

The applicant is proposing to remove the upper 6 to 8 inches of topsoil from a 10 acre strip of the subject property. The soil will be sold commercially. Traffic will enter and exit via an existing approach onto Highway 35. The operation is estimated to last for a 3 year period. Once the operation is complete the property will be tilled and seeded back into agricultural production. The applicant conducted a similar operation in 2004 on a neighboring property as seen by aerial photography. Seeing the aerial photographs showing the previous extraction and location of the proposed extraction may indicate how the property will look during the extraction and once the property has reverted to agricultural use (figures 3 and 4).

Figure 3: The exact location of the proposed extraction.

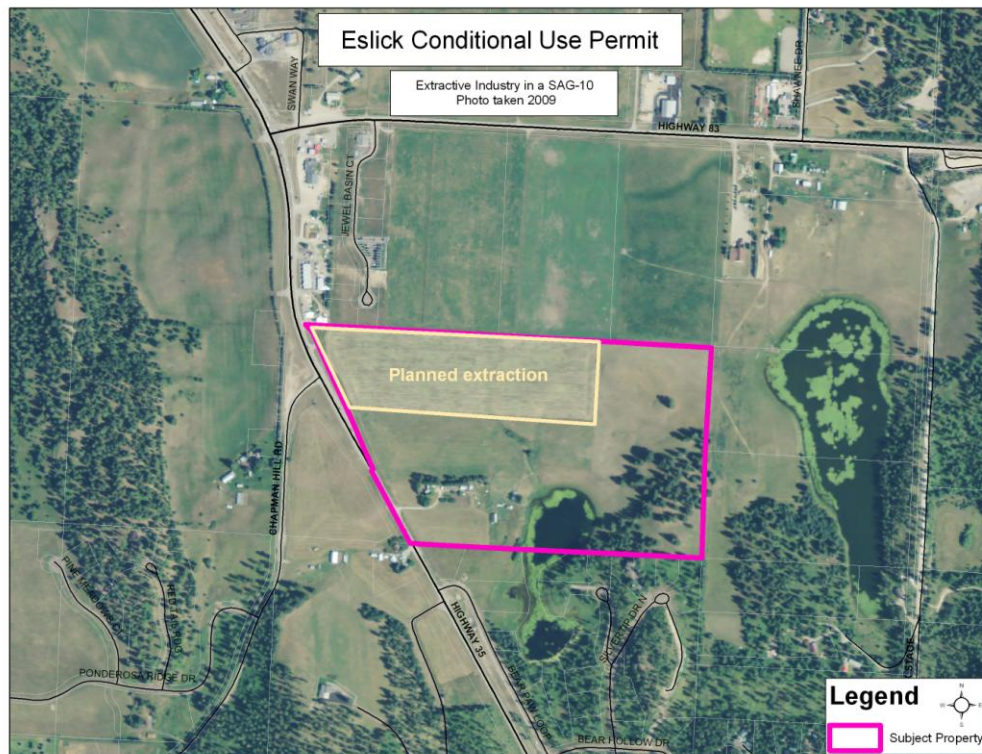
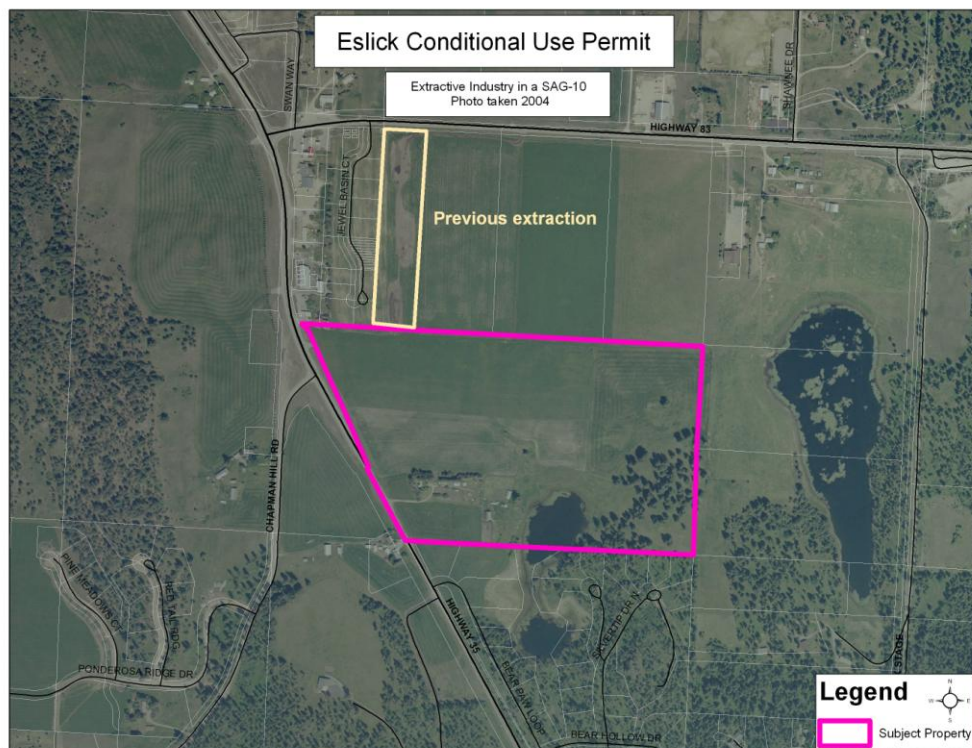


Figure 4: An aerial photograph showing a previous extraction.



The removal of top soil for commercial use is considered an Extractive Industry as defined in Section 7.06.040 Flathead County Zoning Regulations (FCZR). The definition of Extractive Industry is: *Commercial or industrial operations involving the removal and processing of natural accumulation of sand, rock, soil, gravel, or any mineral.* Section 3.07.03 (14) (FCZR) lists Extractive Industries as a conditional use in SAG-10 zoning designation.

Section 4.10 FCZR defines additional conditional use standards for extractive industries. The additional requirements include compliance with the Montana Open Cut Mining Act administered by the Montana Department of Environmental Quality (DEQ), a requirement for off street parking, and a “Plan for Development of the Site”. The applicant has submitted a plan for development of the site which includes off street parking and basic elements required in Section 4.10.040 FCZR. The site plan is also consistent with Policy 14.3 in the Bigfork Neighborhood Plan.

F. Compliance With Public Notice Requirements

A notice of the request and public hearing was mailed to property owners within one hundred and fifty (150) feet of the subject property on April 12, 2010. Legal notice was published in the Daily Interlake newspaper on April 18, 2010.

G. Agency Referrals

Request for comments were sent to the following public agencies.

- Jean Crow, and James Freyholtz of the Montana Department of Transportation regarding the use of the existing approach
- Julie Spencer of the Bigfork Water and Sewer District because there is the potential for sewer infrastructure on and adjacent to the subject parcel
- Rod Samdahl of DEQ regarding Montana’s Open Cut Mining Laws

III. COMMENTS RECEIVED

A. Public Comments

As of 5:00 pm of April 20, 2010, no public comments have been received. Any public comments received after April 19, at 5:00 pm will be distributed directly to the appropriate boards at the time of the public meeting/hearing.

B. Agency Comments

- Julie Spencer of the Bigfork Water and Sewer District responded saying there is a sewer main on the western edge of the property. It is buried at about 6 feet. They do need to maintain manholes and air release valves at ground level if they are to be affected. The truck traffic should not affect the main.
- Rod Samdahl of DEQ stated the applicant will need to secure a determination from DEQ as to whether they need a mining permit.
- James Freholtz of MDT stating that MT 35 is limited access control and the applicant may need a new approach permit depending upon the use.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate usable space

The subject property is approximately 65.8 acres, of which approximately 10 acres will be affected by the proposed use. The property has adequate usable space for the scope of the operation.

Finding #1- The subject property has adequate usable space because the subject property is approximately 65.8 acres and the proposed extractive industry will occupy 10 acres of the subject property.

ii. Adequate access

Access to the subject property is by a paved approach onto Highway 35. The access is located on the western boundary where the proposed use will occur. Heavy equipment will not need to cross other portions of the subject property, nor will they need to travel across other properties. The access is adjacent to commercial uses. The amount and type of traffic generated by the proposed use will not be out of character with the area. Access to Highway 35 is the jurisdiction of the Montana Department of Transportation (MDOT). The applicant will need to contact MDOT to confirm the approach can accommodate the proposed use.

Finding #2- The site will have adequate access to Montana Highway 35 because heavy-vehicle traffic associated with the proposed extractive industry will have direct access to a state highway, a paved access apron exists and a state agency (MDT) will further review the proposed access to ensure applicable safety standards are met.

iii. Absence of environmental constraints

The National Wetland Inventory identifies a wetland on the southern portion of the parcel. The wetland is at least 500 feet from the area of operations and should not be affected. According to available groundwater data in the Bigfork Neighborhood Plan, groundwater is estimated to be greater than 20 feet in this area. The property is in agricultural production and does not appear to have critical habitat for sensitive species, nor is it located in an area known to be winter range for large ungulates. According to FEMA FIRM Panel 2305G there are no flood hazards on the property. The subject property appears to be free of environmental constraints. The applicant will be required to contact the DEQ for compliance with the state's open cut mining laws.

Finding #3- The proposed use should not have significant impacts on the natural environment because the property is largely absent of commonly identified environmental constraints.

B. Appropriateness of design

i. Parking scheme

The parking scheme has not been specifically addressed by the applicant. The number and location of parked vehicles will likely depend upon where on the property the soil is being removed from. According to the applicant, up to 15 loads could be removed from the property per day. Under the heaviest traffic scenario if all 15 loads came for loading at the same time, there would need to be room for 15 trucks plus one vehicle for the employee loading the soil. Given the site is 65.8 acres, it seems reasonable all 15 trucks and the additional vehicle for the loader could be accommodated on the property without vehicles parked on the highway right of way.

ii. Traffic circulation

The traffic circulation has not been specifically addressed by the applicant. The exact traffic circulation will likely depend upon where on the property the soil is being removed from. All vehicles entering and exiting the property will utilize the existing approach onto MT Highway 35.

iii. Open space

Approximately 55.8 acres of the 65.8 acre tract will not be affected by this proposal. Once the applicant has finished the operation, the 10 acres will revert to agricultural land. There will be no long-term impacts to open space.

Finding 4- The site has adequate space for parking, traffic circulation, and open space because the proposal will only affect 10 acres of the 65.8 acre subject property.

iv. Fencing/screening

The applicant has not proposing any fencing or screening. The property is not adjacent to residential areas and there will be no pit created by the extraction of soil. Fencing and screening is required to be considered in a plan of operation in Section 4.10.040 FCZR (1)(B) to restrict access to dangerous areas. Dangerous areas associated with extractive areas may include a pit, and associated blasting. The primary hazard associated with the proposed extraction will be the operation of heavy machinery which is limited in scope and could be comparable to the use of heavy machinery in residential or commercial construction or agricultural related activities. The use of machinery will not be out of scope with how machinery may be used in the surrounding area.

v. Landscaping

The applicant is not proposing any landscaping. The extraction is temporary and the property will revert to agricultural uses once the action is finished. Impacts to neighboring properties will be temporary and limited to the sight of piled soil and a limited amount of noise from heavy machinery. The intensity of the operation would not be significantly out of character with the area. The

operation is not expected to create impacts to adjacent properties that would warrant landscaping.

Finding #5- Fencing, screening, and landscaping is not required because the operation is temporary and the intensity of use is not out of character with the surrounding commercial and agricultural uses.

vi. Signage

The applicant is proposing a sign on site advertising the sale of topsoil. Signs advertising a place of business are permitted in a SAG-10 designation. The sign cannot exceed 40 square feet.

Finding #6- Signage associated with the proposed application is acceptable because the area is zoned SAG-10 which allows signs advertising for a business on site if the sign area does not exceed 40 square feet.

vii. Lighting

The applicant is not proposing any lighting. Hours of operation are planned to be 7:00 am to 6:00 pm Monday through Friday generally from April through October. The hours of operation roughly correspond with daylight hours, no lighting is necessary.

Finding #7- The lack of lighting is appropriate because hours of operation will correspond to day light hours.

C. Availability of Public Services and Facilities

i. Sewer

The Bigfork Water and Sewer district boundaries are adjacent to the subject property; however the operation will not require connection to sewer facilities. A sewer main runs on the west side of the property. The main is buried about 6 feet underground. The main should not be impacted by the operation. There is one man hole located in the wastewater easement on the west side of the property. The easement is not located within the area to be excavated, and will remain at ground level.

ii. Water

The Bigfork Water and Sewer District boundaries are adjacent to the subject property; however the operation will not require connection to sewer facilities. There will be no impact on the Bigfork Water and Sewer District.

Finding #8- There will be no impact on existing water or sewer facilities because the proposed use does not require connection to water or sewer facilities and the activity will not impact sewer lines or man holes.

iii. Storm Water Drainage

A storm water plan was not submitted by the applicant. The site is relatively flat and the disturbed area is at least 500 feet to any water bodies. The proposed action to remove 6 inches of topsoil is not dissimilar to the tilling of the field for agricultural purposes. Impacts to adjacent properties or water bodies from stormwater is not anticipated to be an issue, however the operation will disturb greater than one acre of soil and the applicant will need to acquire a Storm Water Pollution Prevention Plan (SWPPP) addressing all requested items in a General Permit through DEQ.

Finding #9- The proposed use should not have issues with storm water drainage because the site is relatively flat, and not within 500 feet of any water bodies.

iv. Fire Protection

The property is in the Bigfork Fire district. The nearest station is located less than 2 miles away on MT Highway 35, response times would be similar to other areas in the Bigfork Fire District. The need for fire protection as a result of the proposed action is likely to be very low because no fuels or other combustible materials will be stored on site and the scope of the proposed use is comparable to residential and commercial construction or agricultural activities.

v. Police Protection

The Flathead County Sheriff Department is responsible for law enforcement. The proposed use is not expected to result in an increased response times because the proposed use is similar to uses in other rural areas of Flathead County.

Finding #10- The impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

vi. Streets

The proposed use of the property may generate between 5 and 15 truck loads per day. This equates to 10 to 30 trips per day between April and October of a 3 year period. No roads will be created through this application. The 10 to 30 trips per day will be utilizing MT Highway 35. There addition of 10 to 30 trips per day to MT Highway 35 is not expected to have any impact.

Finding #11- There will be no impact to streets because the operation will add 10 to 30 trips per day April through October for a three year period directly to Montana Highway 35.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

The applicant estimates the operation will generate 5-15 truck loads per day. This relates to 10 to 30 trips per day. The addition of 10 to 30 trips per day will

not be significant on MT Highway 35. Considering the adjacent uses are commercial to the north, and a subdivision farther to the south, the additional 10 to 30 trips per day would not be out of character with the area.

Finding #12- The impacts from traffic generation would be acceptable because the volume of traffic generated by the proposal is not out of character with the immediate neighborhood.

ii. Noise or vibration

Noise and vibrations will be generated by the use of heavy equipment. No blasting will occur. The use of the heavy equipment will not be constant during the hours of operation but will be limited to when soil is being piled, or loaded. The use of the heavy equipment is not significantly different from residential construction or agricultural use. The noise and vibration generated by the proposed use is not significantly out of character with the area.

Finding #13- The impacts to the immediate neighborhood from traffic generation and noise or vibration will be acceptable because the impacts generated by the operation will not be out of character with the surrounding area.

iii. Dust, glare or heat

The removal of vegetation will expose the soil to wind, creating the potential for dust blowing onto adjacent properties. The applicant plans to have a water tender available to control dust as needed. Impacts from glare or heat are not anticipated because the exposed soil will not reflect light or generate excessive heat.

Finding #14- The impacts generated by dust, glare, or heat will be acceptable because dust will be controlled by a water tender as needed and impacts from glare and heat are not anticipated.

iv. Smoke, fumes, gas, or odors

The operation of heavy equipment will result in the production of smoke and or fumes. However; the duration and extent of how heavy machinery will be used is limited to when piling and loading soil. The limited duration and extent of use of heavy machinery will not be out of character with other uses in the surrounding area.

Finding #15- The impact generated by smoke, fumes, gas, or odors will be acceptable because the impacts generated by the operation are limited to when piling and loading soil and will not be out of character with uses in the surrounding area.

v. Inappropriate hours of operation

The applicant's stated hours of operation will be 7:00 am to 6:00 pm Monday through Friday, from around April to October depending upon weather. The location of the extraction on the subject property is not adjacent to uses where the hours of operation would be inappropriate.

Finding #16- The hours of operation of the proposed use would be acceptable because they would not be out of character with the hours of operation of adjacent uses or significantly different from uses in the surrounding area.

V. SUMMARY OF FINDINGS

Finding #1- The subject property has adequate usable space because the subject property is approximately 65.8 acres and the proposed extractive industry will occupy 10 acres of the subject property.

Finding #2- The site will have adequate access to Montana Highway 35 because heavy-vehicle traffic associated with the proposed extractive industry will have direct access to a state highway, a paved access apron exists and a state agency (MDT) will further review the proposed access to ensure applicable safety standards are met.

Finding #3- The proposed use should not have significant impacts on the natural environment because the property is largely absent of commonly identified environmental constraints.

Finding #4- The site has adequate space for parking, traffic circulation, and open space because the proposal will only affect 10 acres of the 65.8 acre subject property.

Finding #5- Fencing, screening, and landscaping is not required because the operation is temporary and the intensity of use is not out of character with the surrounding commercial and agricultural uses.

Finding #6- Signage associated with the proposed application is acceptable because the area is zoned SAG-10 which allows signs advertising for a business on site if the sign area does not exceed 40 square feet.

Finding #7- The lack of lighting is appropriate because hours of operation will correspond to day light hours.

Finding #8- There will be no impact on existing water or sewer facilities because the proposed use does not require connection to water or sewer facilities and the activity will not impact sewer lines or man holes.

Finding #9- The proposed use should not have issues with storm water drainage because the site is relatively flat, and not within 500 feet of any water bodies.

Finding #10- The impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

Finding #11- There will be no impact to streets because the operation will add 10 to 30 trips per day April through October for a three year period directly to Montana Highway 35.

Finding #12- The impacts from traffic generation would be acceptable because the volume of traffic generated by the proposal is not out of character with the immediate neighborhood.

Finding #13- The impacts to the immediate neighborhood from traffic generation and noise or vibration will be acceptable because the impacts generated by the operation will not be out of character with the surrounding area.

Finding #14- The impacts generated by dust, glare, or heat will be acceptable because dust will be controlled by a water tender as needed and impacts from glare and heat are not anticipated.

Finding #15- The impact generated by smoke, fumes, gas, or odors will be acceptable because the impacts generated by the operation are limited to when piling and loading soil and will not be out of character with uses in the surrounding area.

Finding #16- The hours of operation of the proposed use would be acceptable because they would not be out of character with the hours of operation of adjacent uses or significantly different from uses in the surrounding area.

VI. RECOMMENDATION

Staff recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-06 as findings of fact approve the Conditional Use Permit.

VII. CONDITIONS

1. Dust abatement shall be performed on the site as needed to limit any impacts to surrounding properties and general air quality.
2. The applicant shall obtain a determination that the proposed use is appropriate for the approach permit from the Montana Department of Transportation for access onto Montana 35 and update the permit if required. The applicant shall furnish proof of this permit if required.
3. The applicant shall request a determination from DEQ as to whether they need a mining permit. The applicant shall furnish proof of the determination if required.
4. Hours of operations shall be limited to 7:00 am to 7:00 pm.
5. The operation shall be limited to the removal of top soil.
6. The applicant shall not remove top soil within 5 feet of any Bigfork Water and Sewer District manhole.
7. The removal of materials is limited to the 10 acre portion of the property as indicated in this application.
8. Development and operation of the facility shall be performed in compliance with the information presented and approved except as otherwise modified by these conditions
9. Any change or modification to the use not specified in the application may not be affected unless specifically approved in writing by the Flathead County Board of Adjustment.

Planner: DH